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15 January 1964

CE MURANUTH FOR: Director of Control Intelligence

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Lagai Basis for Cold-Har Activities

- 1. This memorandam is for information.
- Attorney General. Office of Legal Connect. Department of Justice, the points raised by Semator Engene J. McCarthy concerning the juridical or constitutional right of CIA to carry one covert activities directed towards the imposition of a particular line of political thought on a foreign country. The President, with his responsibility for the condect of foreign relations, as Commander in Chief of the Armed Forces, and with the powers toherent in the Presidency, has authority to take such executive actions as he deems appropriate to protect the national interest which are not barred by the Constitution or other valid law of the land.
- 3. There are no general prohibitions in law on cold-war activities of a covert nature, although these are laws limiting such specific acts as mounting military expeditions within this country against a foreign severalge. It would appear, therefore, that cold-war activities not involving an act of war and not within such legal limitations would be within the executive prerogative.
- 4. There is no specific statetory authorization to any assacy for the conduct of such activities. When the Mational Pecurity Act was enacted in 1947, the consideration of section 102, which established the Central Intelligence Agency, was restricted to the performance of intelligence functions. The Language of Magraph (5) of section 102(3), to perform such other functions and entire related to intelligence affecting the estional security

1. the finitional factority Combell may from time to time direct, "
we introduce to be a basis for giving the Agency a charter in
the field of claudestine intuitionals and complexicability variety.

- 5. In 1947, Secretary of Defease Fourestal acked the Unector of Central Intelligence if CiA would be able to conduct ರ್ಮಾಣ ರಂಭ-೧೯೯ ಇಂಭನ್ನು ತಿಳಿದ್ದರು ಅತ್ಯಾತ್ರಾಣ ವಿಶಾರಕ್ಷ ವಿವಿಧಿಸುತ್ತು ಅಂತು ಮಾಡುವುದು type raids, paboluge, and support of generally warfare. Our position at that time was that if the National Security Council coveloped a policy that this country would engage in such covert activities and analymost their combined to CIA we would have to go to the Congress for the funda to carry one soch activities. Justional Security Commoil did develop a Directive (NSC 10/2) s antis; forth a program of covert cold-war activities and annigned 1: 10 the Mice of Policy Coordination mader the Director of Central Littligance with policy guidance from the Department of State. the Congress was asked for and did appropriate funds to support this program, although, of course, only a small number of congressmee in the Appropriations Committees knew the amount and purpose a the appropriation. The Office of Policy Coordination was settivites esceptification entraction with the characteristic intelligence applications in the (dice of the Depoty Director (Plass), and the cold-war charter was assigned to CIA in coordination with the Departments d -tite and Defense by MSC Directive 542.
- 6. Some of the covert cold-war operations are related to Intelligence within a broad interpretation of section 102(d)(3). It would be stratching that eastion too far to include a Contamala or . Cobserve though intelligence and constraintalligence are essential to such activities. In those operations, therefore, the Executive Franch under the direction of the President was acting without specific statutory authorization, and ClA was the agent selected for their conduct. It would, of course, be preferable to have that section read, to perform such other functions and duties related to the national security as the National Security Council may from time to time direct, " instand of having it restricted to intelligence effecting the national ascurity, but it is questionable whether such a change should be sought at this time. Congress has continued to appropriate funds for the conduct of these activities, but again only 4 small number of congressment in our appropriations Subcommitters knew the nature and amount of these appropriations, and why another small group of the congressmes on our parent Subcompilities in the Armed Services Committees and other selected congressmen have known officially the nature of the activities.

TRANSCRIBED PAGES FOLLOW

OCC 62-0083

15 January 1962

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Legal Basis for Cold-War Activities

1. This memorandum is for information

- 2. I have discussed with Nicholas deB. Katzenbach, assistant Attorney General, Office of Legal Counsel, Department of Justice, the points raised by Senator Eugene J. McCarthy concerning the juridical or consitutional right of CIA to carry out covert activities directed towards the imposition of a particular line of political thought on a foreign country. The President with his responsibility for the conduct of foreign relations, as Commander in Chief of the Armed Forces, and with the powers inherent in the Presidency, has authority to take such executive actions as he deems appropriate to protect the national interest which are not barred by the Constitution or other valid law of the land.
- 3. There are no general prohibitions in law on cold-war activities of a covert nature, although there are laws limiting such specific acts as mounting military expeditions within this country against a foreign sovereign. It would appear, therefore, that cold-war activities not involving an act of war and not within such legal limitations would be within the executive prerogative.
- 4. There is no specific statuatory authorization to any agency for the conduct of such activities. When the National Security Act was enacted in 1947, the consideration of section 102, which established the Central Intelligence Agency, was restricted to the performance of intelligence functions. The language of paragraph (5) of section 102 (d), "to perform such other functions and duties related to intelligence affecting the national security

as the National Security Council may from time to time direct," was intended to be a basis for giving the Agency a charter in the field of clandestine intelligence and counterintelligence.

- 5. In 1947, Secretary of Defense Forrestal asked the Director of Central Intelligence if CIA would be able to conduct covert cold-war activities, such as black propaganda, commandotype raids, sabotage, and support of guerrilla warfare. position at the time was that if the National Security Council developed a policy that this country would engage in such covert activities and assigned their conduct to CIA we would have to go to the Congress for the funds to carry out such activities. National Security Council did develop a Directive (NSC 10/2) setting forth a program of covert cold-war activities and assigned it to the Office of Policy Coordination under the Director of Central Intelligence with policy guidance from the Department of State. The Congress was asked for and did appropriate funds to support this program, although, of course, only a small number of congressmen in the Appropriations Committee knew the amount and purpose of the appropriation. The Office of Policy Coordination was subsequently combined with the clandestine intelligence activities in the Office of the Deputy Director (Plans), and the cold-war charter was assigned to CIA in coordination with the Departments of State and Defense by NSC Directive 542.
- Some of the covert cold-war operations are related to Intelligence within a broad interpretation of section 102(d)(5). It would be stretching that section too far to include a Guatemala or a Cuba even though intelligence and counterintelligence are essential to seek activities. In those operations, therefore, the Executive Branch under the direction of the President was acting without specific statuatory authorization, and CIA was the agent selected for their conduct. It would, of course, be preferable to have that section read, to perform such other functions and duties related to the national security as the National Security Council may from time to time direct, instead of having it restricted to intelligence affecting the national security, but it is questionable whether such a change should be sought at this time. Congress has continued to appropriate funds for the conduct of these activities, but again only a small number of congressmen in our appropriations Subcommittees knew the nature and amount of these appropriations, and only another small group of the congressmen on our parent Subcommittees in the Armed Services Committees and other selected Congressmen have known offically the nature of the activities.